

Customer No. 24498
Attorney Docket No. PLU020286
Office Action Date: June 12, 2008

REMARKS

The Non Final Office Action mailed June 12, 2008 has been reviewed and carefully considered. Reconsideration of the above-identified application, as herein amended and in view of the following remarks, is respectfully requested.

Claims 1-8 and 26 are pending in this application. Claims 9-20 have been cancelled without prejudice pursuant to a Restriction Requirement. Claims 21-25 have been withdrawn. Applicant reserves the right to file one or more divisional applications for the withdrawn claims. Claims 1 and 7 have been amended. New claim 26 has been added. No new matter has been added by the amendments.

§112 REJECTIONS

Claims 1-6 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In response, Applicant has amended claim 1 to replace "the plurality of frequencies" with "the plurality of pre-defined frequency values." Withdrawal of the rejection is respectfully requested.

§102 and 103 REJECTIONS

Claim 7 was rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,466,832 to Zuzqert et al. (hereinafter Zuzqert). Claims 1-3, 5 and 6 were rejected under 35 U.S.C. §103(a) as being unpatentable over Zuzqert in view of U.S. Patent No. 5,491,839 to Schotz. (hereinafter Schotz). Claim 4 was rejected under 35 U.S.C. §103(a) as being unpatentable over Zuzqert in view of Schotz and in view of U.S. Patent No. 6,389,548 to

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Bowles (hereinafter Bowles). Claim 8 was rejected under 35 U.S.C. §103(a) as being unpatentable over Zuzert in view of Bowles. Applicant respectfully disagrees with the rejections.

Claims 1 and 7 have been amended to recite, *inter alia*, "detecting a loss of phase lock condition in the demodulation of the audio file signal" which is supported by the specification e.g., on page 6, lines 1-12.

In Zuzert, a frequency shift button is provided so that when a user is not satisfied with the transmission quality, he may press the button, causing the transmitter to randomly choose a new pair of channels from the predefined frequency channels for the transmission. However, Zuzert fails to disclose or suggest at least detecting a loss of phase lock condition in the demodulation of the audio file signal, essentially as claimed in claims 1 and 7. Instead, in Zuzert frequency channels are chosen from a plurality of predetermined channels automatically by the transmitter. See Col. 4, lines 7-14, reciting: "[I]n some preferred embodiments of the present invention, the frequency channels are chosen from the plurality of predetermined channels automatically by the transmitting unit. Preferably, in systems as described below in which the receivers transmit control signals back to the transmitter, the channels are chosen according to tests performed on a plurality of bands to determine the bands which have low interference rates." [emphasis added].

Applicant notes that Col. 17, lines 23-35 states:

"Alternatively or additionally, the receiver may transmit back to the transmitter a command to change the pair of channels since the quality of transmission is beneath a predetermined level. When the frequency channels are changed, transmitter 22 preferably notifies receivers 24 and 26 to what frequency to move, so that they may easily tune to the new frequency pair."

Preferably, before choosing the pair of frequencies, transmitter 22 runs self-test procedures and initializes its hardware. Preferably, the self-tests include passing

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through all the carrier frequencies and testing that synthesizer 70 locks onto all the frequencies."

However, Zuerkert is completely silent with respect to any means for or ability to detect a loss of phase lock condition in the demodulation of the audio file signal, essentially as claimed in claims 1 and 7. Instead, Zuerkert merely states that channels may be changed if the quality of transmission is below a predetermined level. This does not amount to nor suggests in any way detection of a loss of phase lock condition.

Schotz fails to cure the deficiencies of Zuerkert. Firstly, Schotz was cited as allegedly disclosing a radio frequency remote control configured for entering a user-desired channel frequency selected from a plurality of pre-defined frequency values, which has now been deleted from Claim 1 and presented in new claim 26. However, the cited switch 10 of Schotz is not equivalent to nor suggests a remote control, instead being clearly disposed physically at the transmitter 4. Contrast this with the present invention, teaching a radio frequency remote control entirely separate from and NOT physically located at the transmitter.

Secondly, Schotz fails to disclose or suggest at least detecting a loss of phase lock condition in the demodulation of the audio file signal, essentially as claimed in claims 1 and 7. Schotz involves a transmitter/receiver system for simultaneous transmission and reception of audio signals over the air, wherein a receiver receives a combined signal and the listener then selects one of the frequency modulated carrier signals in the combined signal at the receiver with a selector switch 10. There is no mention whatsoever of detection of a loss of phase lock condition in a demodulation of an audio file signal, essentially as claimed in claims 1 and 7.

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Accordingly, claims 1 and 7 are asserted to be patentable and nonobvious over Zuzqert in view of Schotz for at least the reasons stated above. Claims 2-6 and 8 depend from claims 1 and 7, respectively. The dependent claims include the limitations of their respective independent claims and are therefore believed to be patentable and nonobvious for at least the reasons stated for claims 1 and 7. Claims 9-11 have been cancelled without prejudice.

The rejection of claims 4 and 8 is based, in part, on the contention that Zuzqert and/or Schotz discloses or suggests the features of claims 1 and 7, from which such claims respectively depend. However, in light of amendments and discussion above, it is clear that the combination of Zuzqert and/or Schotz with Bowles is legally deficient, since, at the very least, as explained above, Zuzqert and/or Schotz does not disclose or suggest the features of claims 1 and 7, from which claims 4 and 8 respectively depend.

DOUBLE PATENTING REJECTION

Claims 7-8 are provisionally rejected on the ground of non-statutory obviousness type double patenting as being unpatentable over claims 7-8 of co-pending U.S. Application Serial No. 10/516859 in view of Zuzqert. Applicant will consider filing a duly executed Terminal Disclaimer in compliance with 37 C.F.R. 1.321 to overcome this rejection upon resolution of all other existing matters. With respect to Zuzqert, please see the above discussion with reference to the §103 rejection.

It is therefore respectfully submitted that the present invention is not disclosed or suggested by the cited references taken alone or in combination. Claims 1-8 and 26 are believed to be in condition for allowance for at least the reasons stated above.

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Withdrawal of all the rejections and early and favorable reconsideration of the case is respectfully requested.

CONCLUSION

In view of the foregoing, Applicant respectfully requests that the rejections of the claims set forth in the Non Final Office Action of June 12, 2008 be withdrawn, that pending Claims 1-8 and 26 be allowed, and that the case proceed to early issuance of Letters patent in due course. As discussed above, a terminal disclaimer will be filed upon indication by the Examiner that all other existing issues are resolved.

It is believed that no additional fees or charges are currently due. However, in the event that any additional fees or charges are required at this time in connection with the application, they may be charged to applicant's representatives Deposit Account No. 08-0732.

Respectfully submitted,

By:


Jeffrey D. Hale
Registration No. 40,012

Mailing Address:

**THOMSON LICENSING LLC
PATENT OPERATIONS
P.O. BOX 5312
PRINCETON, NJ 08543-5312**